

D. G. & D. A. SANFORD.

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APRIL 5, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. MORGAN, from the Committee on Indian Affairs, submitted the following

## REPORT:

[To accompany bill H. R. 4241.]

*The Committee on Indian Affairs, to whom was referred the petition for the relief of D. G. & D. A. Sanford, report:*

That Messrs. D. G. & D. A. Sanford have been engaged for years as cattle-drivers, and on or about the 12th day of June, 1872, they started from the county of San Saba, in Texas, with 2,782 head of cattle for California. They also had with them 38 horses and mules, 4 yoke of oxen, and 2 wagons, which contained their provisions and outfit.

On the 10th day of July they applied to Maj. John P. Hatch, commanding United States troops at Fort Concho, for a military escort across the Staked Plains. The escort was promised them on their arrival at the fort, but upon their arrival, that officer advised them to proceed with their herd, and, as one of the petitioners swears, promised them an escort which would overtake them on the 13th. They, under this advice, drove their herd about twelve miles and went into camp to await the arrival of the promised escort, when at about one o'clock on the morning of the 14th they were attacked by a large body of Indians, a part of whom drove in the herders, while the others drove off the stock. One of the memorialists proceeded at once to the fort, reaching there before daylight, and a force was put under the command of Lieut. W. C. Hemphill, which reached the camp of the petitioners about ten o'clock in the forenoon. They followed the Indians two days and were obliged to return for the want of provisions. They, the petitioners, afterward gathered up 830 head of the cattle, 3 yoke of oxen, and 20 horses and mules. The memorialists swear that they were not on any Indian reservation, but were passing through the county of Bexar, Texas, and that they knew the depredations were committed by Comanche and Kiowa Indians, and estimate their loss at \$34,808.

These statements are sustained by public records to show that the memorialists purchased the number of cattle stated by them, and also are sustained by their herders' statements and by affidavits of others who had more or less knowledge of the memorialists and their herd, and of the robbery, and that the amount claimed is a fair valuation for the stock stolen. There are also affidavits which show that the memorialists are entitled to confidence. A letter dated May 7, 1873, written by F. C. Taylor, superintendent of the El Paso Mail Company, stated that the mail-coach coming east with the El Paso mail was attacked by Indians the same day that the cattle were taken; that the driver was shot, the mail robbed, and two mules taken, and that he has no doubt both

acts were perpetrated by the same party of Indians, who were, as he believes, Comanches and Kiowas from the Fort Sill reservation.

In a letter, July 19, 1873, the same party stated that he had seen two mules in the hands of the assistant quartermaster of the post of Fort Concho that were the lead mules of the team that was captured by the Indians about thirty-three miles west of Fort Concho on the El Paso mail-road, on the morning of the 14th of July, 1872, and that he is informed by the post quartermaster that the mules were sent to him from Fort Sill. There are also copies of invoices of ordnance and ordnance stores turned over to Captain Coxie, Twenty-fifth Infantry, to Lieut. F. A. Kendall, Twenty-fifth Infantry, at Fort Davis, Tex., on the 22d of June, 1872, accompanied by a certified copy from George O. Parker, first lieutenant Fourth United States Cavalry, stating that they were made from the originals, which were found in an Indian camp on the north fork of Red River which was destroyed by Col. R. S. McKenzie's command on the 29th of September, 1872. It is shown by an official letter from the Adjutant-General, United States Army, that the Indian camp so destroyed by the command of Col. R. S. McKenzie was a camp composed of and belonging to the Comanche Indians.

This is a summary of the facts substantiated and proven, not only by the testimony of the memorialists but by the testimony of a large number of disinterested persons, all of whom prove that the memorialists have sustained a great loss by the depredations committed by Indians from the Comanche and Kiowa tribes of Indians. They ask for remuneration. They ask that the same may be granted from the Treasury of the United States, or from funds in the possession of or to come to the possession of the government which belong to the Indians who committed the depredations. The petitioners were engaged in a lawful business. We should inquire whether the government was under obligations to indemnify the memorialists for their loss. Shall the government make indemnification and remunerate itself out of funds belonging to the Indians? This has been repeatedly done when the wrong-doing has been proven against a tribe or nation. July 15, 1870, June 3, 1872, payments were made by the United States by special acts of Congress on account of similar depredation claims. Similar claims have been paid by the honorable Second Auditor of the Treasury, and by the honorable Secretary of the Interior; and as late as May 23, 1876, Senate bill No. 709 was passed, authorizing the payment for depredations committed by the Sioux Indians in 1862. Act of May 29, 1872, provides for the government paying for depredations. Rules and regulations have been adopted by the honorable Secretary of the Interior governing the manner in which proof shall be taken in reference to depredations committed by the Indians, the submission of the same to the Commissioner of Indian Affairs, and the submission thereafter by the Secretary of the Interior to Congress.

The questions invoked in this claim are: Has this depredation been proven against the Comanches and Kiowas? Has the testimony been taken under the rules and regulations and submitted to the Commissioner of Indian Affairs, and are the Comanches and Kiowas liable under their treaty stipulations with the United States to pay for this depredation? We find that the evidence which fastens this robbery upon the Kiowas and Comanches is proved in the affidavits of the claimants, William S. Veck, United States constable, assistant quartermaster United States Army, S. G. Williams, inspector of cattle and hides at Fort Concho, John P. Hatch, lieutenant Fourth Cavalry, late major commanding post at Fort Concho, Frank Shoemaker, second lieutenant Fourth Cavalry, as also by the letters of F. C. Taylor, of May

7 and July 19, 1873, mail-agent, which speak of a robbery of a mail and of the identification of mules that were in the mail-coach when it was robbed, as also in the certificate of a United States officer that the original invoice of ordnance and ordnance-stores were found in an Indian camp on Red River on the 29th of September, 1872, which camp was destroyed by Colonel McKenzie on that day, which camp so destroyed is certified to by General Townsend, Adjutant-General, U. S. A., of date March 21, 1876, as belonging to the Comanches, and from which we conclude that these invoices were in the mail at the time of the robbery; that the robbery of the mail and the memorialists was by the same party, and that party was the Indians in whose camp the invoices were found, and that they were Kiowas and Comanches. Affidavits as to the reliability of the Sanfords every way, and as to the other facts stated in their petition, are very numerous and from persons whose standing is beyond any question. H. K. Clum, Acting Commissioner of Indian Affairs, on the 18th day of December, 1873, submits the claim to the Secretary of the Interior, reiterating all the facts proven, and says that the testimony shows beyond any reasonable doubt that the depredation was committed as charged; that the Indians in council deny having committed the depredation, but, in the judgment of the said Commissioner, the allegations are sustained, and the Sanfords are entitled to indemnity for their actual loss. June 8, 1874, the claim was transmitted to Congress by the Secretary of the Interior for an appropriation to pay the amount allowed by the Commissioner of Indian Affairs. We find upon examination that the treaties made as between the Kiowa and Comanche tribes and the United States provide that they shall not molest or commit depredations upon citizens of the United States or upon stock, cattle, or any other property to them belonging. Article 1 of the last treaty so made provides that they shall not attack or molest persons or stock, and it also provides for the payment of all depredations by them committed, and that the same shall be paid from any money due or to become due to them.

Article 5 of the same treaty makes all evidence submitted as to the depredations binding upon said tribes. Sixty-eight thousand seven hundred dollars is allowed to the Kiowas and Comanches yearly, thirty thousand of which is payable in cash. This yearly payment has, under the treaties made, about twenty years yet to run.

The evidence submitted, the report of the Commissioner of Indian Affairs, the report of the Secretary of the Interior, and the treaties made between the Kiowas and Comanches and the United States, fully justifies the government in holding the Kiowa and Comanche tribes of Indians responsible for the loss of the memorialists.

Your committee therefore report that we find that the claimants have made proof of loss, as required by law and the regulations adopted; that the Indians refuse to make restitution of the property taken or compensation for the loss suffered; that the Indian agent reported the same to the Commissioner of Indian Affairs, together with the evidence of the depredation and the value of property taken; that the same was then examined by the Acting Commissioner of Indian Affairs, and that he made favorable report on claimants' demand, which was, by the Secretary of the Interior, reported to Congress for action; that we are satisfied the loss was sustained by claimants, and that the amount claimed is reasonable; that the said tribe making the depredation are bound by treaty to pay the same out of their annuities, and that they have sufficient funds for that purpose; that the case is a clear and well-sustained one. We therefore respectfully report the same back, and recommend the passage of the bill accompanying this report.



Mr. BOONE, from the Committee on Indian Affairs, submitted the following as the

## VIEWS OF THE MINORITY:

A majority of the Committee on Indian Affairs having determined to report in favor of the payment of the claim of Messrs. D. G. and D. A. Sanford, the undersigned, a minority of said committee, ask to file this as a minority report, and to state briefly the reasons why they cannot agree with the majority upon this claim.

This is a claim presented by D. G. and D. A. Sanford, for depredations alleged to have been committed by the Kiowa and Comanche Indians. These parties were passing through the Indian country with a large number of beef-cattle, horses, and mules, *en route* to California, when they were raided upon, their stock stampeded and driven off. A large number of stock were never recaptured, but no doubt were stolen and used by the Indians. We think the evidence is pretty clear that the Indians who committed this depredation were members of the Kiowa and Comanche tribes. So far as the number of cattle lost by these parties is concerned, and their value, we make no issue with the majority, but are forced to differ from the report of the majority upon another ground, viz: The treaty entered into between the United States and those Indians on the 21st of October, 1867, and proclaimed August 25, 1868, has this provision:

*Treaty between the United States of America and Kiowa and Comanche tribes of Indians, concluded October 21, 1867, and proclaimed August 25, 1868.*

### ARTICLE I.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the tribes herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as, in his judgment, may be proper; but no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs and the Secretary of the Interior; and no one sustaining loss while violating or because of his violating the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

It will be observed that by the terms of this treaty it is expressly stipulated that the person injured shall make proof of his loss and give notice to the Indian agent, *and demand the surrender of the offenders*, to be punished according to the laws of the United States. And if, upon such proof and demand, the Indians refuse, wilfully, to deliver up the offender, then the person injured shall be reimbursed for his losses out of any annuities or any other moneys due or to become due to said tribes. It is clear, therefore, that this demand and refusal are *conditions precedent* to payment of claims arising from depredations committed by said Indians. Now, we submit, that it was and is the duty of these parties to show,



affirmatively, that they have complied with the stipulations of the treaty before they are entitled to recover. This they have not done. It is true that they have made proof, and have demanded the return of their property or restitution therefor, and in doing this, we admit, they have substantially complied with the rules and regulation prescribed by the Secretary of the Interior, under the direction of the President, but they have failed to comply with the very condition contained in the treaty, by which they are authorized to recover at all. It may be said, and no doubt will be argued, that as this claim has been passed upon by the Department of the Interior and its payment recommended, the presumption is in favor of the claimants having complied with the law in all respects. This is pleading a conclusion and not a fact; and as claimants rely upon a statute for recovery, *they must show* that they have complied with every requirement of the statute before they can recover.

It may be further argued, that, as these parties have complied substantially with the regulations of the Secretary of the Interior, this ought to entitle them to recover. But in answer to this we suggest that in making these rules and regulations the Secretary of the Interior did not intend to abrogate a plain provision of the treaty, but simply intended to regulate the method of taking the proof and presenting it, in order to the demand required by the treaty. And even if he had attempted to abrogate this provision of the treaty he had no authority to do so, else the article in the treaty would be inconsistent with itself. But there is no conflict between the treaty and the regulations prescribed.

It may seem a hardship upon these parties, but this is no fault of the committee or of the House. We are called upon in this case, not to make a new treaty, but to carry out and enforce one already made.

It is not our purpose to go into the general subject of the payment of Indian depredations. It is quite sufficient for our present purpose to suggest that there are a large number of such claims. Already the amount recommended by the Interior Department for payment exceeds *a million* of dollars. And there are other claims of similar character pending before the Interior Department amounting to more than *four millions* of dollars. And before the funds due, or which shall hereafter become due to these and other Indian tribes shall be charged with the payment of these claims, each claim should be subjected to the closest scrutiny, and the fullest and clearest proof should be required of the justice and correctness of each claim; and also, that the law has been fully complied with. Otherwise, the funds of the Indians will be exhausted and the government will be compelled to support them out of the public treasury.

A. R. BOONE.  
A. M. SCALES.  
T. M. GUNTER.